

LEAVE AND DISABILITY REGULATORY COMPLIANCE

# Summary of legislative and regulatory changes

*November 2021*

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# California

## *West Hollywood Ordinance No. 21-1168 (paid and unpaid leave)*

Enacted Nov. 15, 2021

Effective Jan. 1, 2022

Informational only — Sedgwick does not administer

The City of West Hollywood, California (“City”) [enacted an ordinance](#) that establishes a local minimum wage, requires employers to provide paid and unpaid leave benefits, and governs how businesses advertise and distribute service charges. The new ordinance covers all employers with covered employees, but certain provisions will phase in at different schedules or rates for different types and sizes of employers. Hotel employers are subject to the leave provisions before other employers. Under the ordinance, a “hotel employer” is a person who owns, controls, or operates a hotel in West Hollywood.

Employers must provide at least 96 compensated hours off per year for sick leave, vacation or personal necessity to full-time employees to be made available at the employee’s request. Employers must also permit full-time employees to take at least 80 additional hours per year of uncompensated time off to be used for sick leave for the illness of the employee or a member of their immediate family where the employee has exhausted their compensated time off for that year.

Employees must be eligible to use accrued paid and unpaid leave after their first six months of employment or the date set per company policy if earlier. Employers may not unreasonably deny an employee’s request to use the accrued compensated or uncompensated time off. Unused accrued compensated time off will carry over until the time off reaches a maximum of 192 hours, and unused accrued uncompensated time off will carry over until the time off reaches a maximum of 80 hours, unless the employer’s established policy is more generous.

These provisions become effective on Jan. 1, 2022, for “hotel employers” and “hotel workers,” whereas, for other entities, July 1, 2022, will be the start date.

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# Colorado

## *Final Rule 7 CCR 1103.7 (Healthy Families and Workplace Act)*

Enacted Nov. 10, 2021

Effective Jan. 1, 2022

Informational only — Sedgwick does not administer

Colorado has adopted [final rules](#) calculating the rate of pay under the Healthy Families and Workplace Act (HFWA) for Wage Protection Act (WPA) purposes. The existing rule for HFWA leave provides that the pay rate must be at least the applicable minimum wage. The final rules clarify that the HFWA pay rate must be calculated generally using the same rules applicable to calculating an employee's "regular rate" under Colorado law. However, bonuses included in the regular rate calculation are excluded. Only the method in rule 1.8.3(A) may be used for employees with variable hourly rates, except that the rate is measured over 30 days prior to taking leave.

The final rule also clarifies the pay rate for indeterminate shifts. Under the final rule, if an employee uses paid leave for a shift of indeterminate length (for example, a shift that is defined by business needs rather than a previously specified number of hours), an employer may determine the number of paid leave hours used by the employee based on the number of hours actually worked by a replacement employee in the same indeterminate shift. If there is no replacement employee for the indeterminate shift, the number of paid leave hours used by the employee is based on the number of hours actually worked by the employee for their most similar shift in the past.

The final rule also addresses on-call employees. On-call employees are entitled to use paid leave during any hours they have been scheduled to work that would qualify as "time worked" under Colorado law. Otherwise, being "scheduled to work" does not include shifts for which an employee has been asked to be available or on-call, unless the employee is performing work. However, if an on-call employee has an agreement with an employer to be paid for a scheduled shift regardless of whether the employee actually works the shift, the employer must provide paid leave for that shift.

# District of Columbia

## *B 404 (COVID-19-related leave)*

Enacted Nov. 18, 2021

Effective Nov. 18, 2021

The District of Columbia has amended its [leave of absence laws](#) to provide for paid time off for COVID-19 vaccinations as well as unpaid time off to accommodate employees and their family members affected by COVID-19. This emergency measure will remain in effect for no longer than 90 days.

### [Paid vaccination leave](#)

#### [Informational only — Sedgwick does not administer](#)

Under the new law, employers must provide paid leave to employees for absences related to COVID-19 vaccinations. This includes leave taken for the employee or for the employee's child to receive the vaccine or a booster, as well as leave taken for the employee or employee's child to recover from side effects of receiving the vaccine or a booster. Eligible employees must receive two hours of leave for injections of the vaccine, and up to eight hours per injection for vaccination recovery leave, to be taken within the 24-hour period following the injection. No more than 48 hours of leave per year may be taken for this purpose. During the leave, employers must compensate employees at their regular rate of pay. Employees are eligible for vaccination leave once they have worked at least 15 days for the employer.

The law makes it clear that the vaccination leave must be provided in addition to other paid leave the employer provides, subject to certain exceptions. Employees taking vaccination leave may not be required to find another employee to perform their work during their absence. Employers may require an employee to provide reasonable documentation of the need for leave, including a vaccination record or other documentation of the date and time of the vaccination.

### [D.C. Family and Medical Leave Act](#)

The new law also extends the unpaid leave for employees under the District's Family and Medical Leave Act if an employee cannot work because they have tested positive for COVID-19 and must quarantine under Department of Health guidelines; are caring for a family member or individual with whom the employee shares a household who has tested positive for COVID-19 and must quarantine under Department of Health guidelines; have been recommended to quarantine by a healthcare provider or employer due to COVID-19, including because the employee or an individual with whom the employee shares a household is at high risk for serious illness from COVID-19; must provide care for a family member or an individual with whom the employee shares a household who is quarantining due to Department of Health guidance, a healthcare provider's recommendation, or the order or policy of the individual's school or childcare provider; or must provide care for a child whose school or place of care is closed, or whose childcare provider is unavailable due to COVID-19.

Employees may use up to 16 weeks of leave under the law in the two-year period after the effective date of the COVID Vaccination Leave Emergency Amendment Act of 2021.

# District of Columbia

## *B 405 (COVID-19 related leave)*

Passed Council Nov. 2, 2021

If enacted, effective following approval by the Mayor, a 30-day period of Congressional review, and publication in the DC Register

If enacted, this [temporary measure](#) will extend recently enacted Bill 404 for 225 additional days. The law will provide for paid time off for COVID-19 vaccinations as well as unpaid time off to accommodate employees and their family members affected by COVID-19.

### [Paid vaccination leave](#)

The law will require that employers provide paid leave to employees for absences related to COVID-19 vaccinations. This includes leave taken for the employee or for the employee's child to receive the vaccine or a booster, as well as leave taken for the employee or employee's child to recover from side effects of receiving the vaccine or a booster. Eligible employees must receive two hours of leave for injections of the vaccine, and up to eight hours per injection for vaccination recovery leave, to be taken within the 24-hour period following the injection. No more than 48 hours of leave per year may be taken for this purpose. During the leave, employers must compensate employees at their regular rate of pay. Employees are eligible for vaccination leave once they have worked at least 15 days for the employer.

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Employees may use up to 16 weeks of leave under the law in the two-year period after the effective date of the COVID Vaccination Leave Emergency Amendment Act of 2021.

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# District of Columbia

## *B 440 (COVID-19 leave extension)*

Enacted Nov. 1, 2021

Effective Nov. 1, 2021

On March 17, 2021, the District of Columbia enacted an emergency measure to assist District residents who may face work stoppage due to a quarantine or actual sickness by providing wage replacement. The measure also required employers to provide paid leave for COVID-19-related reasons and created a grant program for small businesses to help cover employee salaries and benefits, operating costs or loan repayments.

The measure defined “COVID-19 emergency” as emergencies declared in the Declaration of Public Emergency (Mayor’s Order 2020-045) with the Declaration of Public Health Emergency (Mayor’s Order 2020-046), declared on March 11, 2020, including any extension of those declared emergencies. The [new measure](#) defines the term “COVID-19 emergency” as the period of time from March 11, 2020 through Nov. 5, 2021.

# District of Columbia

## *B 484 (Universal Paid Leave Act)*

Passed Council Nov. 2, 2021

If enacted, effective immediately

The District of Columbia Universal Paid Leave Act provides paid leave benefits to employees. If enacted [this bill](#) will amend the Universal Paid Leave Act to increase the amount of paid leave per fiscal year to six workweeks of medical leave and two workweeks of prenatal leave. For leave claims filed before Oct. 1, 2021, the maximum duration of each type of paid leave benefits are as follows:

- Eight workweeks of qualifying parental leave.
- Six workweeks of qualifying family leave.
- Two workweeks of qualifying medical leave.
- Zero workweeks of qualifying prenatal leave.

Any claims filed after Oct. 1, 2021, the maximum paid leave benefits in any 52-workweek period are as follows:

- Eight workweeks of qualifying parental leave.
- Six workweeks of qualifying family leave.
- Six workweeks of qualifying medical leave.
- Two workweeks of qualifying prenatal leave.

The bill also allows for potential yearly increases in paid leave benefits.

# District of Columbia

## *Emergency Rule 4 DCMR 17 (Universal Paid Leave Act)*

Enacted Sept. 30, 2021

Effective Sept. 30, 2021

The District of Columbia has enacted [emergency rules](#) related to the Universal Paid Leave Act. Under the Act, eligible employees may take paid leave for a variety of parental and health-related reasons.

### [Interference and retaliation](#)

The Act makes it clear that it is unlawful for any person to interfere with, restrain, or deny the exercise of rights provided under the law. The emergency rules provide examples of interference, including intimidating conduct, failing to provide a notice of rights under the law, and providing false or misleading information about benefits provided under the law, among others. Similarly, the Act prohibits an employer from retaliating against a person because the person opposed an unlawful practice, filed a charge or instituted proceedings, requested leave under the Act, or provided information connected to an inquiry related to the Act. The emergency rules provide examples of unlawful retaliation, including subjecting an employee to intimidation or an adverse employment action, or denying an employee additional hours of work, among others.

### [Interaction with FMLA and District of Columbia Family and Medical Leave Act \(DCFMLA\)](#)

Under the DCFMLA, employees may take unpaid leave for a variety of parental and medical reasons. The emergency rules clarify that the Act does not permit employees to take leave beyond the scope of that provided by the DCFMLA, nor does the Act provide any job protections beyond that of the DCFMLA. If an employee's leave under the Act does not qualify as leave under the DCFMLA, the protections of the DCFMLA do not apply, but adverse employment actions taken against the employee could still qualify as retaliation.

If the leave taken under the Act also would qualify as protected under either the FMLA or the DCFMLA, the leave taken under the Act will run concurrently with those leaves, not in addition to those leaves. The rules further clarify that employers need not provide leave under the Act if other paid leave benefits are available to the requesting employee, subject to some exceptions. After an employee has exhausted their leave entitlement under the DCFMLA, they may still be eligible for some paid leave benefits under the Act. However, the leave would not be covered by the protections that the DCFMLA provides.

If an employee's leave under the Act also qualifies as leave under the DCFMLA, the employer must follow the seniority rules set forth in the DCFMLA. Similarly, if an employer's policy is to maintain benefits or seniority for employees that are on an unpaid, non-DCFMLA leave, the employer must do the same for employees on paid leave under the Act.

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## Illinois

### *HB 106 (Employee Sick Leave Act)*

Passed House; Passed Senate; to Governor Nov. 22, 2021

If enacted, effective immediately

Informational only — Sedgwick does not administer

Illinois enacted the Employee Sick Leave Act in 2016 to permit an employee to use their employer-provided sick leave benefits to care for a family member. The Act specifically excluded employers who were subject to the Railway Labor Act. If enacted, [this bill](#) will repeal that provision, as the Employee Sick Leave Act will cover employers subject to the Railway Labor Act.

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## New York

### *SB 2928 (paid family leave)*

Enacted Nov. 1, 2021

Effective Jan. 1, 2023

New York has amended its [paid family leave law](#) to expand the definition of family member. The law permits an eligible employee to use paid family leave benefits while taking leave to provide physical or psychological care for a family member made necessary by the family member's serious health condition. Under the law, "family member" means a child, parent, grandparent, grandchild, spouse or domestic partner. This amendment adds sibling to the list of family members. It defines sibling as a biological or adopted sibling, a half-sibling or a stepsibling. Please note this change is not effective until Jan. 1, 2023.

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# New York

## *New York City Int. No. 2448-2021 (vaccination leave)*

Passed by Council Nov. 23, 2021

If enacted, effective immediately

Informational only — Sedgwick does not administer

If enacted, [this bill](#) will require New York City employers to provide COVID-19 child vaccination leave. Any employee with a child under the age of 18 or the parent of an older child who is incapable of self-care because of a disability will be entitled to four hours of COVID-19 vaccination time per vaccine injection, for each child. The leave may be used to take the child to the vaccination appointment or to care for a child who is suffering temporary side effects from the vaccine. The leave will be paid at the employee's regularly rate of pay.

Employers may require employees to provide reasonable documentation that the child received the COVID-19 vaccination.

The Information contained within this document is intended to provide summary level information on proposed or enacted laws related to workers' compensation. It is not intended to provide guidance on the application of these legal requirements or as an update to your Company's workers' compensation policies. We recommend you consult with Legal Counsel to determine what changes, if any, should be applied to Company Policy.

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